*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 29583 OF 1997
AND
WRIT PETITION NO. 32874 OF 1997

W.P.29583 OF 1997

% 05.06.2007

The Executive Engineer,
APSIDC Division, Eluru and another

..... Petitioner

Vs.

$ Saragadam Koteswara Rao and another

....Respondents.

! Counsel for the Petitioner: Sri T.Nageswara Rao

^ Counsel for the Respondent: Sri Pitchaiah

< Gist:

>Head Note

? Citations:

[1] 1985(4) SCC 201
2 2004(8) SCC 195
3AIR 2005 SC 2179
4 4006(1) SCC 337
5 2006(9) SCC 132
6 2006(1) SCC 106
7 2005(12) SCC 181
8 2005(10) SCC 792
9 1949(1) LLJ 254
10 1951(2) LLJ 314

[11]1959 (2) LLJ 676
[1][12]971 (1) LLJ 233
[13]1981(1) LLJ386
[14]2006(1) ALD 201.
[15] 2004(1) An.W.R. 67 (DB)
[16](2002) 3 SCC 25

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29583 OF 1997
AND
WRIT PETITION NO. 32874 OF 1997

COMMON ORDER:

W.P. No. 29583 of 1997 was filed to quash the award of the Labour Court, Guntur, in I.D. No. 668 of 1991 dated 13.07.1997, whereby the order of termination of the respondent-workman was set aside and the petitioner herein was directed to reinstate him with continuity of service but without back wages. W.P. No. 32874 of 1997 is filed to quash the award of the Labour Court, Guntur, in I.D. No. 625 of 1991 dated 17.03.1997, whereby the order terminating the services of the respondent-workman was set aside and the petitioner herein was directed to reinstate him with continuity of service but without back wages.

Since common questions arise for consideration in both these writ petitions, and as the Executive Engineer, Eluru Division of the A.P.S.S.I.D.C. is the petitioner in both these cases, both the writ petitions were heard together and are now being disposed of by a common order. It would suffice if the facts in W.P. No. 29583 of 1997 are taken note of.

In the claim statement filed before the Labour Court, the respondent-workman contended that he had joined as a pump operator in Nallajerla Sub Division-I under the control of Deputy Executive Engineer, A.P.S.I.D.C. on 01.04.1980, that he worked continuously from 01-04-1980 to 20-05-1981 and that on 20-05-1981 he was orally informed by the Sub-Division Incharge that his services were terminated. The respondent-workman contended that since no notice of termination was given by the petitioner herein, and no compensation was paid, termination of his services was in violation of Section 25-F of the Industrial Disputes Act. The workman contended that he had waited all these years with the fond hope that he would be taken back into service and, since the Corporation did not choose to reinstate him, he had approached the Labour Court and there were no latches on his part.

In the counter affidavit filed before the Tribunal by the petitioner herein, the allegations made in the claim statement were denied. It is stated that the services of the respondent-workman were utilized temporarily for a limited purpose and for a specific work, that, after completion of the work for which he was engaged, his services were no longer required and his engagement, therefore, came to an end, that the respondent-workman was not

promised employment in future, that he had voluntarily left the place of work and had abstained from duty and that he had no right to seek any relief. Petitioners contended that the respondent-workman had never represented his case for the last one decade. In the counter affidavit, it is also stated that the petitioner-Corporation takes up schemes, that in the process of execution, both skilled and unskilled persons were employed and, no sooner the scheme was completed, persons who were engaged for the said scheme were no longer treated as workers under the Corporation and that the respondent-workman did not have any right to agitate claiming any sort of employment, either permanent or temporary, in the petitioner-Corporation. According to the petitioners such persons were engaged only temporarily on daily wages till completion of the scheme and, soon after completion of the work, their services were dispensed with. Petitioners also stated that the respondent-workman did not put up continuous service as required under the law and that there was no obligation on their part to issue any notice or pay wages in lieu of notice since the workman was not an employee of the Corporation. It was also stated that the services rendered by the respondent-workman was purely temporary and intermittent, that the work did not require full time employment, that the workman was not appointed against any permanent post and that he himself had abstained from duties and had no vested right to claim reinstatement. It is also stated that the claimant never worked as pump operator as alleged in the petition at their Nallejarla sub-division I. In his rejoinder, the respondent-workman reiterated that

he had worked for 240 days immediately prior to his termination.

Before the Labour Court, the respondent-workman examined himself as WW.1 and another worker as WW.2. He marked a xerox copy of the representation, submitted by a group of employees to the Vice-Chairman of the Corporation, as Ex.W.1 and the postal acknowledgements as Exs.W.2 to W.5. On behalf of the petitioner-employer, MWs.1 and 2 were examined and Exs.M.1 to M.13 were marked.

The Labour Court held that, as per the entire evidence, it was clear that the respondent-workman was taken as a pump operator by the Corporation and that he had discharged his duties as a pump operator for a period of not less than 240 days continuously. The Labour Court relied on the admission of MW.1, in chief-examination, that the respondent-workman had worked for more than 240 days in Nallajerla Sub-Division. The Labour Court also noted the contention of the Corporation that the workman did not work continuously but had worked for more than 240 days in spells and observed that, if that was the case, the Corporation ought to have established their case by filing necessary documents. The Labour Court held that the documents were available with the corporation, as admitted by MW.1 in cross-examination with regard to the payment register and cash register, but the Corporation did not choose to produce the said books. The Labour Court noted that a petition had been filed by the respondent-workman requesting for a direction to the petitioner-Corporation to produce the muster rolls but in spite of an order they were not produced in Court. The Labour Court held that, as

rightly contended on behalf of the workman, an adverse inference was required to be drawn against the petitioner-Corporation for non-production of the documents and that, if the said documents were produced they would clearly establish that the workman had worked for more than 240 days in the petitioner-Corporation. With regards the contention that the workman had voluntarily abandoned his job, the labour Court held that it was for the employer to take necessary action to conduct an enquiry into his absence. The Labour Court noted the contention of the petitioner-management that the financial position of the corporation was bad on account of non-supply of funds by the Government and that the bore-wells had been handed over to the respective beneficiaries and, as the petitioner corporation was not in a position to reinstate the respondent-workman, it was a fit case for payment of compensation. The Labour Court held that this particular plea had not been taken by the petitioner-corporation in its counter-affidavit. The Labour Court, on noting Ex.M-3 the order of the Government dated 08.11.1991 rejecting the request of the petitioner-corporation to regularize the services of its employees, held that it was not as if there was no work for the respondent-workman as the corporation had itself requested the Government to regularize their services. The Labour Court noted that bore-wells were still being supervised by the regular staff of the corporation and it was not as if the corporation had been wound up or closed down. Regarding financial loss suffered by the corporation, the Labour Court held that there was no convincing and authentic evidence placed by the corporation and that, under

such circumstances, since termination of the services of the respondent-workman was in violation of Section 25-F of the Industrial Disputes Act, as neither one month's notice was given nor compensation paid, he was entitled for reinstatement with continuity of service.

With regards payment of back wages, the Labour Court held that there was an unexplained delay of more than a decade on the part of the respondent-workman in approaching the Labour Court for redressal and, just before filing of the I.D, a collective representation was sent in the year 1991 though their services were terminated in the year 1981 and that, while this abnormal delay may not be a ground for throwing out the I.D, it was a circumstance to be taken into consideration for payment of back wages. In such circumstances the Labour Court held that the respondent-workman was not entitled for back wages. The Labour Court held that there was an employer-employee relationship between the petitioner-management and the respondent-workman, that the services of the workman was illegally terminated and accordingly passed an award directing his reinstatement with continuity of service but without back wages.

Sri Pitchaiah, learned counsel appearing on behalf of Sri P. Raghavender Reddy, learned counsel for the respondent-workman, would submit that an omnibus denial and an evasive reply in the counter denying the specific allegation that the first respondent-workman had worked continuously from 01-04-1980 till 20-05-1981 cannot be treated as a denial since, under Order VIII Rule 3 of the Code of Civil Procedure, it is not sufficient for the

defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth. Learned counsel would contend that, since the petitioner had admitted that the workman was employed in the corporation, in support of their plea that the workman was engaged intermittently they ought to have given specific details of the period during which his services were engaged. Learned counsel would contend that, despite an application being filed to have the records produced in this regard and despite a specific direction from the Labour Court to the Corporation to produce them, these records were not produced and the only course left open to the Labour Court was to draw an adverse inference against the Corporation. Learned counsel would contend that the very fact that a counter affidavit was filed would show that the records were available as a counter affidavit could only have been filed on the basis of the records. According to the learned counsel, the oral evidence of the respondent-workman was supported by a co-worker and was sufficient to discharge the initial burden of proof cast on him to establish that he had worked for more than 240 days in the 12 month period preceding his termination and since the burden, thereafter, shifted on the employer, it was for the petitioner herein to let in evidence, oral and documentary, to show that the respondent-workman had not worked for 240 days in the 12 month period preceding his termination. Learned counsel would contend that, while the employer had examined two witnesses with regards factors such as financial loss caused to the Corporation etc, no

documentary evidence was let in to show that the respondent-workman had not worked for 240 days in the 12 month period preceding his termination. Learned counsel would rely on **H.D. Singh Vs. Reserve Bank of India**[1], **Municipal Corporation, Faridabad Vs. Siri Niwas**[2], **Manager, R.B.I., Bangalore Vs. S. Mani**[3], **ONGC Ltd. Vs. Shyamal Chandra Bhowmik**[4], **Surendranagar District Panchayat Vs. Gangaben Laljibhai**[5], **R.M. Yellatti Vs. Assistant Executive Engineer**[6], **Executive Engineer Vs. Lekh Raj**[7] and **Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari**[8].

As to whether the Labour Court should have examined the question, whether the respondent-workman should have been paid compensation in lieu of reinstatement in the light of the evidence of MW.2 that the Corporation was running in losses, Sri Pitchaiah, learned counsel for the respondent-workman, would contend that it was for the employer to plead and prove such special circumstances. Learned counsel would contend that, in the absence of a specific plea in the counter affidavit that the Corporation had suffered huge losses, no evidence could be let in. Learned counsel would contend that the special circumstances, which the employer was required to plead and prove, to deny the relief of reinstatement to a workman, was a mixed question of fact and law and, unless such special circumstances were brought to the notice of the Labour Court by the employer, failure by the Labour Court to examine the question whether compensation ought

to have been awarded in lieu of reinstatement was not such an error necessitating interference under Article 226 of the Constitution of India. Learned counsel would place reliance on **Western India Automobile Association Vs. Industrial Tribunal, Bombay**[9], **Buckingham & Carnatic Mills Ltd. Vs. Workers**[10], **Punjab National Bank Vs. Workmen**[11], **The Management of Panitola Tea Estate Vs. Workmen**[12], **Surendra Kumar Verma Vs. Central Government Industrial Tribunal, New Delhi**[13].

Sri T. Nageswara Rao, learned counsel for the petitioner-Corporation, would submit that, since the petitioner had brought to the notice of the Labour Court that the Corporation was continuously running in losses, the Labour Court ought to have examined whether compensation could have been awarded in lieu of reinstatement. Learned counsel would place reliance on **Md. Hyder Vs. Industrial Tribunal-II, Hyderabad**[14]. According to the Learned Counsel since the onus was on the claimant workman to establish that he worked for more than 240 days in the 12 month period preceding his termination, and not on the employer, the Labour Court, in drawing an adverse inference for non-production of documentary evidence by the petitioner-management, had placed the burden of proof on the employer. Learned counsel would contend that where two conflicting judgments of co-ordinate benches of the Supreme Court are brought to the notice of the High Court, the High Court should follow the judgment which appeared to it to state the law more elaborately and more

accurately. Learned counsel would place reliance in this regard on a Division Bench judgment of this Court in **Special Deputy Collector, Land Acquisition**, **Steel Plant, Visakhapatnam Vs. Narla Gopalakrishnaiah**[15].

The first question which necessitates examination is whether the finding of the Labour Court, that the respondent-workman has put in the requisite 240 days of service in the 12 month period preceding his termination, is based on the evidence on record. Before examining this question it is, however, necessary to note the judgments cited across the bar and the principles enunciated therein.

In **H.D. Singh**[1], the appellant was a tikka mazdoor employed by the Reserve Bank of India. He was selected to work on daily wages and, on days when no work was given to him, he had to wait till noon for the Bank to decide whether or not work was available on such days. While he was not given any work after July 1986, no written order was given terminating his services. Since his representation seeking redressal was of no avail, the petitioner approached the Assistant Commissioner of Labour and thereafter the dispute, whether the action of the management is striking off his name from the list of approved tikka mazdoors was justified or not, was referred for adjudication to the Tribunal. When the matter came up in appeal before the Supreme Court the bank initially contended that the attendance register for the month of July, 1976 had been destroyed. Thereafter, a supplemental affidavit was filed giving details of the number of days the appellant had worked. The appellant charged the bank

with having tampered the records and wanted the relevant records to be filed but they were not produced. It was in such circumstances that, the Supreme Court held that in the absence of any evidence to the contrary, an inference should be drawn that the appellant had worked for more than 240 days from July 1975 to July, 1976. It is in this factual matrix that the Supreme Court observed:

"……That takes us to the question whether the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent Bank arranged posting Tikka Mazdoors, like the appellant, in such a manner that they were denied the benefits of the Industrial Disputes Act. Since the first respondent Bank disputed the fact that the appellant had worked for sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The advocate who appeared for the appellant before the Tribunal, Shri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written arguments before the Tribunal explaining the mistake committed by the bank in the computation made by it of the number of working days of the appellant. From this affidavit, it is seen that the first respondent Bank put forward a case that the attendance register for the month of July 1976 had been destroyed and that Sundays and other holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days that he worked. In this affidavit, it is seen that he worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The appellant was denied work from July 1976. His affidavit shows that he had worked for 202 days from July 1975 to July 1976. According to him, if we add 52 Sundays and 17 holidays, the total number of days on which he worked comes to 271 days. The appellant charged the Bank with having tampered with the records. To contradict the appellant's case, the first respondent Bank did not produce its records. The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of the appellant. These grounds are met by the first respondent Bank in their counter-affidavit filed in this Court by stating that "when the matter was before the Industrial Tribunal, the registers in question were filed in another case before the Industrial Tribunal-cum-Labour Court and produced in that Court. However, I submit that now the attendance register has been destroyed but the payment registers are available with the respondent Bank

as proof of the number of days on which the appellant worked". In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July 1975 to July 1976, is true……."

In **Range Forest Officer Vs. S.T. Hadimani**[16] the Industrial Tribunal, in arriving at the conclusion that the workman had worked for more than 240 days, held that the burden was on the management to show that there was justification in termination of the service of the workman and that the affidavit of a workman was sufficient to prove that he had worked for 240 days. In this context the Supreme Court observed:

"…….In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. **It was the case of the claimant that he had so worked but this claim was denied by the Appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside……" (emphasis supplied).**

In **Siri Niwas**[2], the respondent-workman claimed to have worked with the appellant-Municipal Corporation from 05.08.1994 to 31.12.1995 as a tubewell operator and to have thereafter worked from 01.01.1995 to 16.05.1995. On the ground that his services were illegally terminated on 17.05.1995 an industrial dispute was raised by him. Before the Tribunal, the workman contended that as he had completed 240 days service in a year, the purported order of retrenchment was illegal as the conditions precedent

therefor, as contained in Section 25-F of the Industrial Disputes Act, 1947, were not complied with. The Municipal Corporation, on the other hand, contended that the respondent-workman had worked only for 136 days on daily wages during the preceding 12 month period. The Tribunal came to the conclusion that the workman had worked for 184 days and, since he had not worked for 240 days in a year, he was not entitled to any relief. The Tribunal noticed that neither the management nor the workman had produced the muster rolls which was their joint liability. The Tribunal observed that the workman did not even summon the same although the management had not produced the muster rolls. Aggrieved thereby the respondent-workman approached the Punjab and Haryana High Court. The High Court was of the view that, as the employer did not produce the relevant records before the Industrial Tribunal, an adverse inference should be drawn against it, as it was in possession of the best evidence and that it was not necessary for the workman to call upon the employer to do so. The High Court was of the view that, while the burden of proof may not be upon the employer, but in case of non-production of documents an adverse inference could be drawn against the employer. The High Court directed the employer to reinstate the workman with 75% back wages. In appeal, the Supreme Court observed:

"……..**The provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment.** In terms of Section 25-F of the Industrial Disputes

Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by an employer for effecting a valid retrenchment:

(*i*) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;
(*ii*) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months.

For the said purpose it is necessary to notice the definition of "continuous service" as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17-5-1995. **For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5-8-1994 to 16-5-1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal.** Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case.

A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some

reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.

…….**Furthermore a party in order to get benefit of the provisions contained in Section 114 Ill. (*g*) of the Evidence Act must place some evidence in support of his case.** Here the respondent failed to do so……

……Curiously, the respondent produced copies of some muster rolls before this Court. If he was in possession of the said documents, it boggles one's imagination as to why the same had not been produced before the Tribunal. As indicated hereinbefore, he filed some documents before the High Court but the same were not accepted. The High Court, therefore, proceeded to pass the impugned judgment only on the basis of the materials relied on by the parties before the Tribunal. The High Court, in our opinion, committed a manifest error in setting aside the award of the Tribunal only on the basis of adverse inference drawn against the appellant for not producing the muster rolls……" (emphasis supplied).

In **S. Mani**[3] the respondents were ticca mazdoors who were intermittently engaged by the Reserve Bank of India whenever regular Class IV employees were not available. They were never regarded as regular mazdoors. Two waiting lists were maintained by the Bank. The first waiting list was of those ticka mazdoors who could be appointed as regular mazdoors whereas the second list was of those who were to be engaged only as ticca mazdoors. As their request for re-employment was not accepted, they raised an industrial dispute and the Tribunal, in its award, held that the workmen had completed 240 days of service and that their services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act and they were, therefore, entitled for reinstatement in the bank's services as per the prevailing rules and conditions of service with full back wages. The Division Bench of the Karnataka High Court modified

the award in part. In appeal the Supreme Court, while holding that the adverse inference drawn, in **H.D. Singh**[1], for non-production of certain documents was rendered on its own facts and did not constitute a binding precedent, observed:

"…..The workmen concerned in their evidence did not specifically state that they had worked for 240 days. They merely contended in their affidavit that they were reiterating their stand in the claim petition.

Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore not correct to contend that the plea raised by the respondents herein that they had worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. In any event the contention of the respondents having been denied and disputed, it was obligatory on the part of the respondents to add new evidence. The contents raised in the letters of the union dated 30-5-1988 and 11-4-1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved, particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

The appellant, therefore, cannot be said to have admitted that the respondents had worked for more than 240 days.

Non-production of the documents

It is no doubt true that the Industrial Tribunal by an order dated 12-5-1993 inter alia directed the appellant to produce register of the workmen for the period between April 1980 and December 1982 in respect of the first party workmen and attendance register. The Tribunal, however, in its award noticed the explanation of the appellant that the attendance registers being old and hence could not be produced holding:

"Of course, it is true that the second party had given an explanation namely those attendance registers are very old and hence could not be produced. But this explanation cannot be acceptable, because as I pointed out earlier, apart from the attendance registers, there may be other relevant records to show that the first parties either worked continuously as alleged by the first parties or only during the leave vacancy with break of service."

The learned Tribunal further held:

"Therefore, the materials placed before this Tribunal lead to the only conclusion that the second party is not in a position to prove their case namely First Parties 1 to 11 concerned had abandoned themselves without any proper reasons."

An adverse inference, therefore, was drawn for non-production of the attendance register alone, and not for non-production of the wage-slips. Reference to "other relevant documents" must be held to be vague as the appellant herein had not been called upon to produce any other document for the said purpose.

As noticed hereinbefore, in this case also the respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.

Burden of proof

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service stating:

"It is admitted case of the parties that all the first parties under the references CRs Nos. 1 to 11 of 1992 have been appointed by the second party as ticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the abovesaid claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the abovesaid claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party."

Mr Phadke placed strong reliance on *H.D. Singh* 5 to contend that adverse inference was drawn therein for non-production of certain documents. *H.D. Singh* 5 was rendered on its own facts. In that case, a special leave petition was entertained by this Court directly from the award passed by the Industrial Tribunal. Before this Court, both the parties filed affidavits and several documents. The workmen therein categorically disclosed the number of days they had worked in each year. In that case the name of the workman was struck off as he had allegedly concealed his educational qualification; purportedly on the basis of a confidential circular issued by the bank on 27-6-1976 to the effect that matriculates will not be retained in the list. As the workman therein in reply to the letter of the bank stated that he was not a matriculate in 1974 and he passed the examination only in 1975, he was not given any work even after July 1976 without issuing any written notice terminating his services. Holding that the workman had been retrenched from service, as noticed hereinbefore, affidavits of the parties were filed and, thus, some evidence had been adduced. The number

of actual days worked by the workman therein was also brought on record by the respondent. **The said decision, thus, having been rendered in the fact situation obtaining therein does not constitute a binding precedent**……" (emphasis supplied)**.**

In **Ghemarbhai Harjibhai Rabari**[8], the workman claimed to have worked from July, 1994 to October, 1995 as a driver and that the salary paid to him was debited to the account of the Bank in its books. He claimed that his services were terminated from October, 1995 in violation of Section 25-F of the Industrial Disputes Act. The Tribunal held that though no letter of appointment was produced by the workman, he produced three vouchers which showed that he was paid a sum of Rs.1,500/- towards his wages as a driver and also established that he continuously worked from 17.07.1994 to 10.10.1995. The Tribunal also noticed that the bank did not produce any material whatsoever to deny or explain the vouchers produced by the workman. On the ground that no material evidence was produced by the bank the Tribunal held that the fact, that the workman had worked between July, 1994 and October, 1995, was established. The Tribunal directed reinstatement of the workman with continuity of service and full back wages. On appeal, the Supreme Court observed:

"……..**While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case.** In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank. As against this, as found by the fora below, no

evidence whatsoever has been adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank……" (emphasis supplied)

In **Lekh Raj**[7], the Labour Court held that the workman had put in 240 days of continuous service and this finding was recorded on the basis of the muster rolls produced by the respondent-workman which was not rebutted by the employer. Holding that the termination was in violation of Section 25-F of the Industrial Disputes Act the Labour Court directed reinstatement of the workman with 50% back wages. The Labour Court also held that the management had not produced any material to disprove the evidence produced by the respondent. The writ petition filed against the award was dismissed by the Punjab and Haryana High Court. In appeal, the Supreme Court observed:

"…….We have heard the learned counsel for the appellant in this appeal and perused the award as well as the judgment of the High Court. From the award we notice that so far as the workman is concerned he has produced muster rolls for the relevant period which indicated that the workman did work continuously from 1-12-1994 to 31-8-1995 and the appellant management did not produce any material from its side to rebut the same on such factual background we find no reason to interfere with the impugned order. Hence this appeal fails and the same is dismissed.

In Civil Appeal No. 5311 of 2003 the respondent Sikander Singh raised a dispute on the ground that he was working with the appellant from 1-2-1993 to 14-12-1996, on which date his services were terminated without complying with the requirements of Section 25-F of the Industrial Disputes

Act. In support of his contention that he has been working continuously during the said period he examined himself and reiterated the claim made by him in his claim petition. From the award it is seen that even though he was cross-examined, no question was asked in regard to the period of his working with the appellant management. We find management witness MW 1 Sukdev Singh in his examination admitted that the workman therein had worked from 1-2-1993 to 13-9-1996 which supports the case of the workman. On the said basis the Labour Court by its award dated 3-8-2000 allowed the claim of the respondent workman and directed his reinstatement with full back wages.

The writ petition filed against the said award came to be dismissed on the ground that the factum of the respondent workman having worked for 240 days being established by him and the appellant management herein failed to produce any evidence to the contrary the award of the Labour Court could not have been interfered with.

We have heard the learned counsel for the parties and perused the award as well as the judgment of the High Court and we find no reason to interfere with the same. The appeals are dismissed…….".

In **R.M. Yellatti**[6], the workman was appointed as a daily wage earner, by the Assistant Executive Engineer, on 26.11.1988. He worked upto 20.06.1994 on which date his services were terminated. He claimed to have continuously worked for more than 240 days immediately prior to 20.06.1994 and that his services were wrongly terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court held that the workman had worked for more than 240 days prior to his termination, that the Assistant Executive Engineer had issued a certificate to the effect that the appellant had worked from 24.11.1988 to 20.06.1994, that though the workman had been cross-examined on behalf of the management, there was no material to disbelieve the certificate issued by the Assistant Executive Engineer and that the said certificate was duly proved as it contained the signature of the Assistant Executive

Engineer. The Labour Court came to the conclusion that the management had suppressed material evidence from the Court. The Labour Court observed that the employer had not chosen to file the non-muster roll extracts for the period of 12 months immediately prior to 20.06.1994 and had offered no explanation for non-production thereof. The Labour Court directed reinstatement of the workman with 50% back wages. Aggrieved thereby the management approached the Karnataka High Court. The said writ petition was dismissed by the single judge. On appeal, the Division Bench held that the certificate produced by the workman nowhere stated that he was in continuous service for 240 days, that there was no evidence on record to show that the certificate was in fact issued by the Assistant Executive Engineer and that the records produced by the department showed that the exhibit was a fabricated document. The Division Bench observed that the workman had failed to prove the letter of termination or the receipts indicating payment of monthly salary and that, except the self-serving statement of the workman, there was nothing on record to support his case of having worked for 240 days. Following the judgment of the Supreme Court in **S.T. Hadimani**[16], the Division Bench quashed the award. In appeal, the Supreme Court held:

> "…….Now coming to the question of burden of proof as to the completion of 240 days of continuous work in a year, the law is well settled. In *Manager, Reserve Bank of India* v. *S. Mani* 6 the workmen raised a contention of rendering continuous service between April 1980 to December 1982 in their pleadings and in their representations. They merely contended in their affidavits that they had worked for 240 days. The Tribunal based its decision on the management not producing the attendance register. In view of the affidavits filed by the workmen, the Tribunal held that the burden on the

workmen to prove 240 days' service stood discharged. In that matter, a three-Judge Bench of this Court held that pleadings did not constitute a substitute for proof and that the affidavits contained self-serving statements; that no workman took an oath to state that he had worked for 240 days; that no document in support of the said plea was ever produced and, therefore, this Court took the view that the workmen had failed to discharge the burden on them of proving that they had worked for 240 days. According to the said judgment, **only by reason of non-response to the complaints filed by the workmen, it cannot be said that the workmen had proved that they had worked for 240 days. In that case, the workmen had not called upon the management to produce the relevant documents. The Court observed that the initial burden of establishing the factum of continuous work for 240 days in a year was on the workmen.** In the circumstances, this Court set aside the award of the Industrial Tribunal ordering reinstatement……..

…….Analysing the above decisions of this Court, **it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case**….

……Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily-waged earners, particularly those who are appointed to work in government

departments. **Daily-waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily-wagers; that these records should be signed by the competent designated officers and that at the time of termination, the designated officers concerned should give certificates of the number of days which the labourer/daily-wager has worked. This system will obviate litigations and pecuniary liability for the Government**……" (emphasis supplied)

In **Shyamal Chandra Bhowmik**[4], the workman had approached the Gauhati High Court claiming that he had worked as a casual worker in the ONGC from November, 1982 with intermittent layoffs and, but for such intermittent layoffs which were deliberate, he had worked for more than 240 days and, in any event, during the period 1989-90 and 1990-91 he had worked continuously for more than 240 days. The Single Judge of the Gauhati High Court allowed the writ petition. In appeal, the Division Bench dismissed the appeal holding that ONGC had not established that the respondent had not worked for more than 240 days in the twelve months preceding his retrenchment. In appeal the Supreme Court observed:

"…….. When examined with reference to the principle laid down in the aforesaid decisions, it is clear that the approach of the High Court i.e. the learned Single Judge as endorsed by the Division Bench, is not correct. The relevant issue was not considered in its proper perspective. The respective stand was to be examined in the light of law laid down by this Court in the decisions referred to above. The question of shifting of onus assumes relevance only when evidence is led. Almost all the decisions referred to above, related to matters which came to the High Court after evidence was

led before the Tribunal by the contesting parties. The High Courts should not entertain writ petitions directly when claim of service of more than 240 days in a year is raised. Whether a person has worked for more than 240 days or not is a disputed question of fact which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analysed and conclusion can be arrived at. As in the instant case the legal position has not been analysed in the proper perspective, it would be appropriate if the matter is decided by the forum provided under the Act……..".

In **Gangaben Laljibhai**[5], the Labour Court noted that details pertaining to the attendance of the respondent had been produced, and that xerox copies of the salary register and muster rolls had also been produced. The Labour Court held that the workman's plea that he had worked for various periods for more than 240 days in a year was established and there was non-compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 and as such his termination was illegal. The Labour Court held that the burden of proving that the employee concerned had not worked for 240 days in the preceding year immediate to the date of termination lay on the employer. The Supreme Court, while holding that this view was untenable, observed:

"…… It was held in all these cases that **the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer**…….

…..In the instant case, the Labour Court and the High Court also lost sight of the fact that the xerox copies of the appellant's attendance and salary registers were produced. The respondents have not adduced any evidence except making oral statement that they had worked for more than 240 days…….".

The principles enunciated in the above referred judgments of the Supreme Court can be summarized thus:-

1. The provisions of the Evidence Act in terms do not apply to proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles, the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman adducing cogent evidence, both oral and documentary. (**S.T. Hadimani**[16], **Siri Niwas**[2]).

2. Pleadings are no substitute for proof. A plea raised by the workman that he had worked continuously for 240 days cannot be deemed to have been admitted by applying the doctrine of non-traverse. (**S. Mani**[3]).

3. Mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. (**S.T. Hadimani**[16]).

4. It is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer. (**Gangaben Laljibhai**[5]).

5. While the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of proof so required, would vary from case to case. (**Ghemarbhai Harjibhai Rabari**[8]).

6. Under Section 114, Illustration (g) of the Evidence Act, the Court may presume the existence of any fact which it thinks

likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

7. A party, in order to get benefit of the provisions contained in Section 114 Ill. (*g*) of the Evidence Act, must place some evidence in support of his case. (**Siri Niwas**[2]).

8. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. Such presumption is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. (**Siri Niwas**[2]).

9. Mere non-production of muster rolls *per se,* without any plea of suppression by the claimant workman, will not be a ground for the Tribunal to draw an adverse inference against the management. (**S.T. Hadimani**[16]).

In the present case the only documentary evidence produced before the Labour Court, by the respondent-workman, is the representation submitted by a group of employees to the Vice-Chairman of the Corporation. While it is true that the respondent-

workman orally deposed that he had put in more than 240 days continuous service, during the 12 month period prior to his termination, in cross-examination he, however, stated that he was not given any appointment order, that he was neither sponsored through the employment exchange nor selected by any committee, that he was not given any termination order, that he was paid for the days he worked, that, while there were tube-wells in his village where he was residing, he did not know who was maintaining the bore-wells and that he was not aware whether the works were entrusted to ryots due to lack of funds with the corporation. The respondent-workman denied the suggestion that he did not work continuously during the said period.

WW-2, the village karnam, deposed that during the period 1980-81 the respondent-workman worked as a pump operator in the corporation, that he was supplying water through pumps to the ryots in the village and that, thereafter, he was removed from service. In cross-examination he stated that since the bore-well was dug in his field, he knew that the respondent-workman worked as the operator of the said bore well, that since about 14 years the respondent-workman was not working the said bore, that after him a work inspector and an electrician of the department were looking after the said bore, that the department did not appoint any pump operator, that both the electrician and the work inspector were regular employees of the corporation and that now the bore-well was being looked after by the ryots of the village. It is relevant to note that except to state that, during the period 1980-81, the respondent-workman had worked as a pump operator in the

respondent corporation, the evidence of WW-2 is of no assistance to respondent-workman. W.W-2 neither stated that the respondent-workman had worked for more than 240 days during the 12 month period prior to his termination nor did he depose regarding the number of days the respondent-workman had actually worked during the period 1980-81. It is also necessary to note that WW-2 is not a co-worker but the karnam of the village.

MW-1, in his evidence before the Labour Court, while admitting that the respondent-workman worked as a pump operator from 01.04.1980 to 20.05.1981, in Nallajerla sub-division, stated that the respondent-workman was not a regular employee, that he was not sponsored by the employment exchange or selected by the selection committee, that he was only a casual worker engaged to work as and when there was work, that digging of bore-wells was not a permanent work and was purely temporary, that salaries were paid to casual workers at S.S.R. rates, that there was no work in their department for providing employment to the respondent-workman, that the financial position of the corporation was very bad, that it was likely to be closed at any moment, that all the bore wells dug by department were being handed over to beneficiaries, that the respondent-workman never worked continuously for 240 days in any calendar year in the department and that, from the year 1981 onwards, the Corporation had not engaged or employed any person as a pump operator. In cross-examination MW-1 stated that to his knowledge, other than permanent staff, no other workman had worked continuously in the corporation for 240 days in a calendar year, that he presumed that

the petitioner did not work continuously for 240 days because there would not be continuous work for any casual worker, that he could not say for how many days the respondent-workman had worked in their corporation, that he did not know if his services were orally terminated on 25.01.1981, that there were no muster rolls or wage registers maintained for the workman, that it would be mentioned in the 'M' book as to how many days he had worked, that unless he verified he could not say whether the M-books were available in the corporation, that there was no seniority list maintained in respect of casual workers or for N.M.Rs, that payment of wages would be made at the end of the month after calculation of the days worked by the workman and that the wages paid to the workers would be mentioned in the cash book which was a permanent register and unless he verified the records he could not say whether the cash books were available or not in the department. M.W-1 denied the suggestion that the workman worked continuously from 01.04.1980 to 20.05.1981.

M.W-2, in his evidence, stated that the respondent-workman had worked during the year 1980-81 and had left the corporation, that subsequently he worked as a casual employee during 1990-92 and that he was issued notice on 14.09.1992 along with the Canara Bank cheque No. 0316114 dated 12.08.1992 for Rs.767/-, that Ex.M-12 was the said notice, that the notice along with the cheque was received by the workman on 24.09.1992 and that Ex.M-13 was the postal acknowledgment. MW-2 admitted in his cross-examination that the services of the claimant-workman was orally terminated on 20.05.1981, that one month's notice pay

and compensation was not paid at the time of his termination, that he could not say whether the signature on Ex.M-13 was that of the claimant, that Ex.M-12 did not reveal from what date the workman was terminated, that the period was not specified therein and that Ex.M-12 along with the cheque noted therein did not show that notice was included.

On the question whether the respondent-workman had put in more than 240 days continuous service in the twelve month period prior to his termination, except for the self-serving oral testimony of the respondent-workman himself, there is no other evidence, either oral or documentary on record. M.W-1, while admitting that the respondent-workman had worked as a pump operator from 01.04.1980 to 20.05.1981, however stated that he never worked continuously for a period of 240 days in any calendar year and that he worked intermittently during the period from 01.04.1980 to 20.05.1981. On this evidence, the Labour Court came to the conclusion that, since the factum of the respondent-workman being engaged in Nallajerla Sub-division was admitted, the burden was on the employer to establish that he did not work for 240 days during the said period and that their failure to produce the documents which were available, as admitted by M.W-1 with regards the payment register and the cash book, and despite a direction to produce the muster rolls, would necessitate an adverse inference being drawn against the petitioner-management that if the said documents were produced it would establish that the respondent-workman had continuously worked for more than 240 days, in the respondent corporation, during the

twelve month period prior to his termination. Despite noting that M.W-1, in cross-examination, had stated that neither muster rolls nor wage registers were being maintained by the petitioner-corporation, that only from the M-book it could be seen as to how many days the respondent-workman had worked, that payment of wages would be made at the end of the month after calculation of the days worked by the workman and that the wages paid to the workmen would be mentioned in the cash book which was a permanent register. M.W-1 also deposed that, without verification, he could not say whether the M-books were available in the corporation.

From the award it is noticed that what was summoned was the muster roll and not the payment register or the cash book. Since M.W-1 deposed that no muster rolls were maintained, for workers such as the respondent-workman, failure to produce such a non-existent muster roll, on a direction from the Labour Court to do so, would not justify an adverse inference being drawn against the petitioner herein, more so in the absence of a plea that the petitioner-corporation had deliberately suppressed such muster rolls or a contention that M.W-1 had deposed falsely. (**S.T. Hadimani**[16]). The Labour Court ought to have examined the question of non-production of records in the context of the unexplained and inordinate delay on the apart of the respondent-workman in invoking its jurisdiction. While the Labour Court has denied back wages to the respondent-workman on the ground of inordinate and unexplained delay of ten years on his part in invoking its jurisdiction in 1991 challenging the order of termination

passed in 1981, it has failed to examine the question of non-production of records this context.

As held by the Supreme Court, in **S.T. Hadimani**[16] and **Gangaben Laljibhai**[8], the self-serving oral testimony of the claimant-workman would not suffice in the matter of discharge of the burden that he had worked for 240 days during the period of 12 months preceding his termination from service. Since the claimant-workman, in order to get the benefit of Section 114 ill (g) of the Evidence Act, must place some evidence in support of his case (**Siri Niwas**[2]), and as no evidence has been placed, this initial burden cannot be said to have been discharged by the respondent-workman. It is not even the case of the respondent-workman that suppression of records was the reason for the petitioner management not producing them before the Labour Court (**S.T. Hadimani**[16]). The Labour Court has, thus, acted in excess of its jurisdiction in drawing an adverse inference for non-production of a non-existing muster roll or the other records.

The petitioner herein, in their counter filed before the Labour Court, have denied the respondent-workman's allegation that he worked continuously from 01.04.1980 to 20.05.1981. They also stated that the claimant never worked as a pump operator, as alleged in the petition, at Nallajerla sub-division. As noted above the Supreme Court, in a catena of judgments, has repeatedly emphasized that the initial burden is on the claimant-workman to prove that he had worked for more than 240 days in the 12 month period prior to his termination from service. In the light of the denial by the petitioners herein, and as the initial burden of proof

lay with the respondent-workman, the contention that the denial in the counter, filed by the petitioners herein before the Labour Court, does not satisfy the requirement of Order VIII Rule 3 C.P.C, even if accepted, is of no consequence. Even otherwise, pleadings before Tribunals/Labour Courts need not measure up to the rigorous standards of the Civil Procedure Code. Requiring the petitioners herein, (Respondents before the Labour Court), to establish that the claimant-workman did not work for 240 days in the 12 month period preceding his termination would, in effect, place the onus of proof on the employer and not the claimant-workman. The award, directing reinstatement of the respondent-workman, is liable to be quashed in the absence of any evidence on record that the respondent-workman had worked for more than 240 days in the 12 month period preceding his termination from service.

Since the award must be quashed on this ground it is wholly unnecessary for this Court to go into the question whether the Labour Court should have examined the petitioner's contention that, even if the respondent-workman is held to have worked for more than 240 days in the 12 month period preceding his termination, he was only entitled for compensation in lieu of reinstatement as the Corporation was running in losses.

Writ petition Nos. 29583 of 1997 and 32874 of 1997 are allowed and the awards of the Labour Court, in I.D. Nos. 668 of 1991 and 625 of 1991 are quashed. However, in the circumstances, without costs.

Date: .06.2007 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
MRKR/ASP

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[1] 1985(4) SCC 201
[2] 2004(8) SCC 195
[3] AIR 2005 SC 2179
[4] 2006(1) SCC 337
[5] 2006(9) SCC 132
[6] 2006(1) SCC 106
[7] 2005(12) SCC 181

[8] 2005(10) SCC 792

[9] 1949(1) LLJ 254

[10] 1951(2) LLJ 314

[11] 1959 (2) LLJ 676

[12] 1971 (1) LLJ 233

[13] 1981(1) LLJ386

[14] 2006(1) ALD 201.

[15] 2004(1) An.W.R. 67 (DB)

[16] (2002) 3 SCC 25